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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 PETRA CARRILLO, *et al.*,

11 Plaintiffs,

12 v.

13 LAS VEGAS METROPOLITAN POLICE  
14 DEPARTMENT, *et al.*,

15 Defendants.

Case No. 2:10-CV-02122-KJD-GWF

**ORDER**

16 Presently before the Court is Defendant Andrew Ubbens' Motion for Attorney Fees (#37).  
17 Plaintiffs filed a response in opposition (#41).  
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19 On August 1, 2011, the Court granted in part and denied in part Defendants' motion to  
20 dismiss. After close scrutiny and analysis Plaintiffs' claims against Andrew Ubbens were dismissed,  
21 because the Court determined that Ubbens was not the proximate cause of decedent's death. Now  
22 Ubbens has moved for an award of his attorney's fees as a prevailing party under 42 U.S.C. § 1988.  
23 As a general rule, "a district court may in its discretion award attorney's fees to a prevailing  
24 defendant . . . upon a finding that the plaintiff's action was frivolous, unreasonable, or without  
25 foundation, even though it was not brought in subjective bad faith." Christiansburg Garment Co. v.  
26 E.E.O.C., 434 U.S. 412, 421 (1978). Christiansburg was a Title VII case and two years later, the

1 United States Supreme Court applied the Christiansburg rationale in the context of 42 U.S.C. § 1983  
2 cases. See Hughes v. Rowe, 449 U.S. 5, 14-16 (1980). By frivolous, the court means that the  
3 litigation must be “meritless in the sense that it is groundless or without foundation.” Hughes, 449  
4 U.S. at 14; see also Dooley v. Reiss, 736 F.2d 1392, 1396 (9th Cir. 1984). In other words litigation  
5 is frivolous if the result is obvious or the arguments are wholly without merit. See Glanzman v.  
6 Uniroyal, Inc. 892 F.2d 58, 61 (9th Cir. 1989).

7 However, “[a] defendant stands in a different equitable position from that of a prevailing  
8 plaintiff. Nevertheless, Congress intended to protect defendants from ‘litigation having *no* legal or  
9 factual basis.” Mitchell v. Los Angeles Ct. Superintendent of Schools, 805 F.2d 844, 847 (9th Cir.  
10 1986)(quoting Christiansburg, 434 U.S. at 420). “Only in exceptional cases did Congress intend that  
11 defendants be awarded attorney’s fees.” Id. at 848. This is not an exceptional case. While the Court  
12 ultimately concluded that Ubbens was not the proximate cause of the death at issue, close analysis  
13 was required for the Court to reach that determination. This was not a case where there was no legal  
14 or factual basis for the complaint. It is unlike other cases where the Court has awarded attorney’s  
15 fees to prevailing defendants in section 1983 actions where, for example, the plaintiff was on notice  
16 of what facts were needed to allege a claim, knew those facts did not exist and brought the claim  
17 anyway.

18 Accordingly, IT IS HEREBY ORDERED that Defendant Andrew Ubbens’ Motion for  
19 Attorney Fees (#37) is **DENIED**.

20 DATED this 16<sup>th</sup> day of March 2012.

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24 Kent J. Dawson  
United States District Judge  
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